

Calendar No. 973

91ST CONGRESS }
2d Session }

SENATE

{ REPORT
No. 91-969

JOHN THOMAS COSBY, JR.

JUNE 25, 1970.—Ordered to be printed

Mr. EASTLAND, from the Committee on the Judiciary,
submitted the following

REPORT

[To accompany H.R. 2275]

The Committee on the Judiciary, to which was referred the bill, H.R. 2275, for the relief of John Thomas Cosby, Jr., having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE

The purpose of the proposed legislation is to confer jurisdiction on the U.S. District Court for the Southern Division of the Northern District of Alabama to hear, determine, and render judgment on the claim of John Thomas Cosby, Jr., a minor, based upon injuries and disabilities suffered as the result of an accident which occurred on or about October 28, 1955, when he was struck by a wheel from a post office truck.

STATEMENT

The House report on H.R. 2275 relates House action on a similar bill, H.R. 14467, 90th Congress, as follows:

The bill H.R. 14467 was the subject of a subcommittee hearing on June 6, 1968. At that hearing the testimony disclosed that John Thomas Cosby, Jr., who is now approximately 17 years of age, was injured at the age of 5 when he was struck by a wheel which had come off a post office truck. The committee was advised that at the time the small boy was playing in front of his house the wheel knocked him down, and while he had some bleeding from the nose and nausea and vomiting following the accident, he appeared at the time that

the injuries were not serious. The committee was advised that a physical examination following the accident failed to reveal any fractures or permanent injury, although the diagnosis was one of cerebral concussion as well as contusions of the chest and abdomen. It was not until considerable time elapsed that the child gave indications of a convulsive disorder and other problems that could have been attributable to the injuries suffered at the age of 5.

The committee has carefully considered the evidence presented to the committee, including the testimony presented at the hearing and the medical statements and other material submitted in connection with the claim and has concluded that this is a proper matter for court determination. Accordingly, it has been recommended that the bill be amended to provide for jurisdiction in the U.S. district court so that the case can be decided on the merits. The court would then be empowered to consider the involved questions of causation and medical evidence which properly are a part of such court proceedings.

The Post Office Department report on the bill notes that an administrative claim was filed and a payment of \$173.42 was paid to the boy's mother in 1956. The committee has carefully considered this aspect of the case. It appears obvious that this payment was intended as compensation for the superficial injuries suffered by John Thomas Cosby, Jr., and would not be intended as compensation for a continuing disability of the type discussed before the committee. Clearly, this release should not be asserted as a bar to the proceeding and, accordingly, the amended bill provides that the action may be brought notwithstanding any prior release. The other issue raised by the Post Office report is the statement to the effect that that Department has information which indicates that John Thomas Cosby, Jr., was declared completely recovered from his injuries. This, of course, would be an issue before the court.

For the reasons stated above and in view of the information submitted to the committee, it has been determined that this is a proper matter for legislative relief as provided in the amended bill. In arriving at this conclusion, the committee wishes to emphasize that this would extend relief to a minor in circumstances where the only proper forum for the consideration of the claim is a U.S. district court. The district courts of the United States are given jurisdiction over tort actions against the United States, and the committee feels that they are best equipped to resolve the issues presented in this case. Accordingly, it is recommended that the amended bill be considered favorably.

The committee, after a review of the foregoing, concurs in the action of the House of Representatives and recommends that the bill, H.R. 2275, be considered favorably.

THE GENERAL COUNSEL,
POST OFFICE DEPARTMENT,
Washington, D.C., December 1, 1966.

HON. EMANUEL CELLER,
Chairman, Committee on the Judiciary,
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: The Postmaster General has asked me to reply to your request for a report on the bill H.R. 18182, for the relief of John Thomas Cosby, Jr.

The bill would authorize payment of \$150,000 to the legally appointed guardian of John Thomas Cosby, Jr., a minor who was injured on October 28, 1955, when he was struck by a wheel which had become detached from a mailtruck in Birmingham, Ala.

The case files relating to the accident have been destroyed pursuant to law. However, we have information which indicates that John Thomas Cosby, Jr., was declared completely recovered from his injuries by medical authority on December 7, 1956; that an administrative claim for damages in the amount of \$573.42 was presented by Mrs. Cosby (mother of John Thomas Cosby, Jr.) through her attorney; and that the claim was allowed in the amount of \$173.42; also, that a check for that amount, dated June 5, 1956, payable to Mrs. Cosby, was mailed to her attorney, Charles L. Howard, Jr., of Birmingham, Ala. The check was paid and subsequently destroyed pursuant to statutory authority.

The present law (28 U.S.C. 2672), relating to the administrative adjustment of claims, provides that the acceptance by the claimant of any award, compromise, or settlement shall be final and conclusive on the claimant, and shall constitute a complete release of any claim against the United States and against the employee of the Government whose act or omission gave rise to the claim. This Department, therefore, does not recommend enactment of this legislation.

The Bureau of the Budget has advised that from the standpoint of the administration's program there is no objection to the submission of this report to the committee.

Sincerely yours,

TIMOTHY J. MAY.

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